



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

April 28, 2015 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2014-272

v.

NJ Office of the Governor
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council (“Council”) considered the April 21, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant’s request item Nos. 1 and 2 are invalid because they failed to include the subject or content of the e-mails sought. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Further, the Complainant’s request items Nos. 3 and 4 are equally invalid for their failure to identify specific government records with reasonable clarity. The Custodian has thus lawfully denied access to any records beyond those he has already provided. N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 28th Day of April, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 30, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2015 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2014-272

v.

**State of New Jersey Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Electronic copies on a compact disc (“CD”) of:³

1. All e-mails sent from thomascaggiano@gmail.com to the Office of the Governor (“Office”) from January 1, 2012 to January 24, 2014.
2. Documents and CDs sent to Chief Counsel, Chief of Staff Kevin O’Dowd and his press secretary from January 2, 2014 to January 24, 2014.
3. Evaluation of the “common law” balancing test conducted on three (3) OPRA requests referred to by the Complainant in a May 21, 2014 letter.
4. Documents provided to the person assigned to respond to “common law” requests for access regarding OPRA request status No. W8613.

Custodian of Record: Andrew J. McNally
Request Received by Custodian: June 25, 2014
Response Made by Custodian: July 7, 2014
GRC Complaint Received: July 11, 2014

Background⁴

Request and Response:

On June 25, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 7, 2014, the Custodian responded in writing, denying the Complainant’s OPRA request as invalid because it countenanced an open-ended search of the Office’s files. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

³ The Complainant appeared to request additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

(App. Div. 2005). *See also Spectraserve, Inc. v. Middlesex Cnty. Util. Auth.*, 416 N.J. Super. 565, 576 (App Div. 2010).

Denial of Access Complaint:

On July 11, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access, arguing that his OPRA request noted that the Custodian should seek clarification if necessary.

Statement of Information:

On August 14, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 25, 2014. The Custodian certified that he responded in writing on July 7, 2014, denying the Complainant’s request as overly broad and invalid.

The Custodian stated that the GRC has previously set forth the following criteria necessary for an appropriate OPRA request seeking e-mails: (1) content or subject; (2) specific date or range of dates; and (3) sender and/or recipient. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian noted that the GRC later applied these criteria to requests for correspondence. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). Further, the Custodian noted that the Council has previously determined that a request failing to contain the subject or content of the correspondence sought was invalid. *See* Ciszewski v. Sparta Police Dep’t (Sussex), GRC Complaint No. 2013-79 (October 2013); Ciszewski v. Newton Police Dep’t (Sussex), GRC Complaint No. 2013-90 (October 2013).

The Custodian argued that the Complainant’s request is invalid because it fails to identify a subject matter or content. Also, the Custodian asserted the request is mostly indiscernible diatribe that loosely refers to time periods for some portions of his request. However, the Custodian argued that, should the GRC determine that the request was valid, there was no unlawful denial of access because the Complainant sought records he sent to the Office. To this end, the Custodian asserted that in Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008), the Appellate Division previously determined that a requestor could not be unlawfully denied access to records already in their possession. *See also* Blay v. Ocean Cnty. Health Dep’t, GRC Complaint No. 2012-223 (June 2013).

The Custodian noted that the Complainant has submitted repetitive requests: for example, request item No. 3 was also at issue in Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-166 (January 2015). Further, request item Nos. 1 and 2 are identical to the request items at issue in Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-263 (currently awaiting adjudication). The Custodian argued that a holding in the Complainant’s favor would only enable his campaign of submitting a large volume of correspondence to the Office and subsequently request same for the sole purpose of harassment. The Custodian noted that the Council has previously addressed the Complainant’s similar

practices with other agencies. See Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20 *et seq.* (September 2007).

Analysis

Validity of Request

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;⁵ NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Regarding requests for e-mails, the GRC has established criteria deemed necessary under OPRA to specifically request an email communication. In Elcavage, GRC 2009-07, the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. *See* Elcavage, GRC 2009-07; Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. *See* Armenti, GRC 2009-154.

In Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant's OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian's counsel responded, advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough's files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07 because it did not include a subject or content. *Id.* at 7.

Additionally, regarding requests for generic records such as "documents," the request at issue in MAG sought "all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident" and "all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity." *Id.* at 539-540. The Court did note that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012)(holding that the complainant's request item No. 2 seeking "[p]roof of submission . . ." was invalid); Edwards v. Hous. Auth. of Plainfiel (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012)(accepting the ALJ's decision holding that an newspaper article attached to a subject OPRA request related to the records sought did not cure the deficiencies present in the request) *Id.* at 12-13.

Here, the Complainant's request items Nos. 1 and 2 sought e-mails he sent (based on the e-mail address provided) from thomascaggiano@gmail.com to the Custodian and "documents and CDs" sent to three (3) individuals in the Office respectively. The items included a time period of January 1, 2012 to January 24, 2014, but were buried in a lengthy paragraph containing a multitude of different allegations, conspiracies, and crimes. Notwithstanding that the Complainant included some criteria in his request items, they still mirror the request in Verry, GRC 2009-124, and are therefore invalid because of the Complainant's failure to include to subject or content in these items.

Additionally, the Complainant's request items No. 3 and 4 sought "evaluation" of a common law test based on three (3) prior OPRA requests and "documents" provided to the person responsible for responding to a specific request. The items also loosely connected responsive records to a time frame by identifying previous requests but not with enough specificity to be considered valid. Repsonding to these items would require the Custodian to

research previous OPRA requests to determine how and where to locate possibly responsive records. For this reason, request items Nos. 3 and 4 lack the specificity required for submitting a valid OPRA request to a public agency under OPRA.

Therefore, the Complainant's request items Nos. 1 and 2 are invalid because they failed to include the subject or content of the e-mails and letters sought. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154; Verry, GRC 2009-124. Further, the Complainant's request items Nos. 3 and 4 are equally invalid for their failure to identify specific government records with reasonable clarity. The Custodian has thus lawfully denied access to any records beyond those he has already provided. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request item Nos. 1 and 2 are invalid because they failed to include the subject or content of the e-mails sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Further, the Complainant's request items Nos. 3 and 4 are equally invalid for their failure to identify specific government records with reasonable clarity. The Custodian has thus lawfully denied access to any records beyond those he has already provided. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

April 21, 2015